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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCES Nos. 10, 10-A, 10-B,
10-C and 10-D of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH-TAX

Versus

ARUN K. PARIKH & OTHERS

Appearance:

MR BB NAIK FOR MR MANISH R BHATT for Petitioner
Respondent No. 1 SERVED.

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

Date of decision: 02/09/98

ORAL JUDGEMENT

(Per R.K.Abichandani, J.)

The Income Tax Appellate Tribunal has referred

the following common question for the opinion of this Court under Section 27 (1) of the Wealth Tax Act, 1957:

"Whether the Tribunal is right in law and on facts in directing that the value of unquoted equity shares of private limited companies be worked out as per Rule 1-D of the Wealth Tax Rules as interpreted by the Gujarat High Court in the case of Ashok K. Parikh 129 ITR 46 ?"

2. The Tribunal dismissed the appeals of the Revenue holding that there was no substance in the objection raised by the Department in view of the decision of this High Court in the case of ASHOK K. PARIKH v. COMMISSIONER OF WEALTH TAX reported in 129 ITR 46. In Ashok K. Parikh (supra), in which this Court had taken a view, while construing Clauses (i) (a) and (ii) (e) of Explanation II to Rule 1-D that, for the purpose of computation of the market value of the equity shares of a company, the advance tax paid under Section 210 of the Income Tax Act, 1961 and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of Clause (ii) (e) of Explanation II to Rule 1-D of the said Rules.

3. The dispute centres around the treatment to be given to the advanced tax paid shown on the assets side of the balance-sheet of the company while working out the value of the equity shares on break-up value method. At the time of making of References, this question was pending before the Apex Court. Now, we have the benefit of the decision of the Apex Court in BHARAT HARI SINGHANIA v. C.W.T. reported in 207 ITR 1. The Supreme Court while construing the provisions of Rule 1-D of the Wealth Tax Rules, 1957, held that the said Rule was required to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued and that all the authorities under the Act including the Valuation Officer were bound by the said Rule. It was further held that while valuing the unquoted equity shares under Rule 1-D, no deductions on account of capital gains tax which would have been payable in case the shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. It was held that Rule 1-D was exhaustive on the subject.

4. The Supreme Court while construing the provisions of the said Rule 1-D read with Explanation II (ii) (e) of the said Rules held that, truly speaking, the advance tax paid is not really an asset, but, the proforma of balance sheet in Schedule VI to the Companies Act requires it to be shown as such. It was held that what Clause (i) (a) of the said Explanation did was to remove the said amount from the list of assets for the purpose of Rule 1-D. It is then that Clause (ii) (e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. The advance tax paid had already gone out of the profits and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in the process accepted the view of Andhra Pradesh, Karnataka, Punjab & Haryana High Courts and differed from the view taken by the Gujarat High Court in C.W.T. v. ASHOK K. PARIKH (supra).

5. In view of the decision of the Supreme Court in BHARAT HARI SINGHANIA v. C.W.T. (supra), the question referred to this court is answered in the negative in favour of the Revenue and against the assessee. The References stand disposed of accordingly with no order as to costs.

[KMG Thilake]

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